NO.: FBT-CV-15-6048078-S	:	**SUPERIOR COURT**
JONATHAN SHAPIRO	:	**J. D. OF FAIRFIELD**
VS.	:	**AT BRIDGEPORT**
FRANK DELBOUNO, ET AL.	:	**NOVEMBER 3, 2016**

OBJECTION TO MOTION IN LIMINE

The Defendants respectfully object to the Plaintiff's Motion in Limine because it is based on a fictitious premise. The Plaintiff set up a straw man - - that the Defendants seek to introduce evidence of the Plaintiff's drug conviction, his firearm conviction and his more recent "uncharged misconduct" of drug use - - then proceed to knock it down. In fact, the Defendants do not seek to introduce such evidence as a general attack on the Plaintiff's credibility nor to depict him as a bad person. Rather, the Defendants seek to introduce this evidence for a very limited purpose, to prove that the Plaintiff's claim for $260,000 to $270,000 for future pain medication is not related to any pain from which he suffers as a result of this accident, but to finance an addiction to opiods and pain killers long preceding this accident.

On February 15, 2013, the Plaintiff was exiting Route 8 using Exit 1. He was on the exit ramp making an audio and video recording of his decent down the exit ramp using his cell phone and his right eye, thereby blocking his right side field of vision. This is known because of the recent disclosure of the recording by the Plaintiff after suppressing it for much of this litigation. The Defendant, Frank Delbuono, Jr. ("Delbuono"), a Bridgeport Police Officer, was operating his vehicle on Prospect Street in Bridgeport when he received on Channel One priority call on his radio (an emergency). Delbuono activated his emergency light and siren - - clearly audible on the

recoding made by the plaintiff - - and proceeded into the intersection through a red light. See General Statutes § 14-283(b). The two vehicles collided.

As a result, the Plaintiff was injured and sustained an alleged 6% permanent partial impairment of the neck and an alleged 8% permanent partial impairment of the low back, hardly unusual ratings following a 2-car accident.

However, the Plaintiff also claims a subjective, idiopathic injury in his right shoulder area for which there are no tangible findings. He claims he needs between $260,000 to $270,000 for future pain treatment for this injury alone. The Defendants have medical evidence from Dr. David Brown that this claim has no medical basis.

The Plaintiff admittedly has been a drug addict most of his adult life and in his youth. He is addicted to opiods [and painkillers]. In 2007, he was convicted of felony attempted possession of narcotics and felony possession of a firearm and was incarcerated for three years. During his left the Plaintiff has been in and out of multiple drug rehabilitation facilities, possibly five times or more. Since this accident he has admittedly relapsed at least once into using illegal narcotics as well as pain killers.

It is the Defendants' contention that the Plaintiff's ongoing subjective claims of pain -- resulting in claims for projected future pain treatment expenses of $268,800.00+ -- is motivated not by pain but by the need for painkillers caused by an addiction that long preceded this accident. This, indeed, is the crux of the Defendants' defense as to damages.

A. Evidence to Contest Damages is Admissible

This evidence is admissible under § 4-5(c) of the Code of Evidence, which is applicable to both civil and criminal cases. Code of Evidence § 1-1(b) and Official

Commentary to § 1-1(b) ("The Code applies to all civil and criminal bench or jury trials in the superior court."). Section 4-5 of the Code provides: "Evidence of other crimes, wrongs or acts of a person is inadmissible to prove the bad character, propensity, or criminal tendencies of that person except as provided in subsection (b)." However, § 4-5(c) of the Code of Evidence, entitled "When evidence of other crimes, wrongs or acts is admissible," provides: "Evidence of other crimes, wrongs or acts of a person is admissible for purposes other than those specified in subsection (a), such as to prove intent, identity, malice, motive, common plan or scheme, absence of mistake or accident, knowledge, a system of criminal activity, or an element of the crime, or to corroborate crucial prosecution testimony."

Here, the evidence is offered not "to prove the bad character, propensity, or criminal tendencies" but to prove that the plaintiff's claim for money damages for future pharmaceuticals is motivated not by a medical need to assuage pain but to finance an addiction.

B. The Length of Time Concerning Convictions Does Not Require Preclusion

The ten-year period has long been the benchmark for remoteness. *State v. Nardini*, 187 Conn. 513, 526 (1982). Here, the Defendant's convictions for felony attempted possession of narcotics and felony possession of a firearm[1] are nine years old. But it is not those convictions in isolation that are relevant. Rather, the convictions are another event in a string of events that punctuate the defendant's continued

[1]The firearms conviction is relevant because of the "known connection between drugs and guns." *State v. Clark,* 255 Conn. 268, 284 (2001); accord, *United States v. Viera-Gomez*, 568 Fed. Appx. 870, 874 (11th Cir. 2014).

addiction to narcotics. Other events is his relapse of drug abuse and his repeated admissions to rehabilitation facilities.

For over sixty-five years, it has been recognized that "'[c]hronic narcotics addiction is characterized by 'an overpowering desire or need (compulsion) to continue taking the drug *and to obtain it by any means.*' World Health Organization, Technical Report No. 21, p. 6 (1950)." (Emphasis added.) *Heard v. United States,* 348 F.2d 43, 48 (D.C. Cir. 1964). At trial, the Defendants will adduce direct and circumstantial evidence that there is no medical need for the Plaintiff to take pain killers in the future, let alone for the rest of his life. His claims for hundreds of thousands of dollars for pain medication is driven by his addiction not any injuries. The Plaintiff's conviction, drug relapses and recent arrest are relevant to show that his addiction still exists as does his need to satisfy it. See *Simons v. State*, 311 Ga. App. 819, 821-22, 717 S.E.2d 319, 321-22 (Ga. Ct. App. 2011) (evidence of defendant's prior drug addiction was relevant, in trial for robbery by snatching, to show her motive to participate with codefendant in crime in order to obtain money to purchase drugs.).

The Plaintiff's response is that, he claims, he has been drug free for a year. This matter is claimed for a trial by jury. "In a jury trial, the credibility of witnesses and the weight to be given testimony is for the jury to determine." *State v. Stankowski*, 184 Conn. 121, 127 (1981). "The plaintiff's credibility [is] for them to pass upon." *Goodhue v. Ballard*, 122 Conn. 542 (1937). "Furthermore, the jury [is] not obligated to believe the testimony of the plaintiff or her experts." *Royer v. Hertz Corp.*, 9 Conn. App. 136, 140–41 (1986). Finally, "it has been held to be a matter of common knowledge that addicts

often relapse, going back and forth between substance abuse and sobriety." *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 376 (2015); see id., 375-77.

For two reasons as set forth above, there is little or no prejudice that can be visited on the Plaintiff by the admission of his criminal convictions and more recent narcotics use. First, the Plaintiff has not sought to suppress the evidence of his repeated admissions into rehabilitation facilities and his relapses. The evidence of the Plaintiff's convictions and recent narcotics use merely complete the chain of evidence extending throughout his adult life, thus mitigating the prejudice that might be visited on the plaintiff if he had a clean slate. *See Leigh v. Schwartz*, No. CV116018306S, 2016 WL 1315611, at *14 (Conn. Super.) ("testimony . . . was cumulative of the other properly admitted testimony, mitigating the potential harmful influence of improper evidence before the jury.").

Second, the Defendants have no objection to an instruction by the Court limiting the jury to the proper use of this evidence "Proper limiting instructions often mitigate the prejudicial impact of evidence of prior misconduct.... Furthermore, a jury is presumed to have followed a Court's limiting instructions, which serves to lessen any prejudice resulting from the admission of such evidence." (Citation omitted; internal quotation marks omitted.) *State v. Morales*, 164 Conn. App. 143, 180 (2016).

The evidence which the Plaintiff seeks to suppress is highly relevant and "closely related to the central issues of the case." *Leigh v. Schwartz*, No. CV116018306S, 2016 WL 1315611, at *13 (Conn. Super.). In fact, it will be at the heart of the Defendants' defense as to damages. Since a portion of the Plaintiff's addiction history will already be

in evidence and the Court will give a limiting instruction to the jury, any prejudice will be minimal.

Conclusion

For all of the reasons set forth herein, the Motion in Limine should be denied.

THE DEFENDANTS

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CERTIFICATION

This is to certify that a copy of the foregoing was sent via first-class mail, postage prepaid, on this 3rd day of November, 2016, to all counsel and pro se parties of record as follows:

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